

TEACHERS' RETIREMENT BOARD

Investment Committee

OPEN SESSION

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SUBJECT: Quarterly Litigation Report                      ITEM NUMBER: 06

TTACHMENT(S): yes

ACTION: \_\_\_\_\_                      DATE OF MEETING: Jan. 9, 2001

INFORMATION:      X                        PRESENTER: Mr. Waddell

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The Quarterly Litigation Report has been prepared as directed by the Investment Committee. Non-Investment litigation will be reported in the Retirement Board meeting.

**STRS QUARTERLY LITIGATION REPORT**  
**January 2001**

**PROPERTY ADVISOR: CB Richard Ellis**

**Wilshire Landmark I**

**Wang v. STRS (1994)** STRS Counsel: Haight, Brown, & Bonesteel. Legal counsel retained by insurance company. Alleged elevator injury at property. Attorneys of insurance company have responded to complaint and proceeding with preparation for trial.

**Northrop Gruman Plaza**

**Sanders v. STRS, et al. (1994)** STRS Counsel: Haight, Brown and Bonesteel. Alleged injury as a result of elevator malfunction. Insurance Company has retained counsel on behalf of STRS. Response to complaint has been filed. Plaintiff's deposition taken March 2, 1995. Millar Elevator (cross-defendant) has filed a governmental claim against STRS with the Board of Control. Upon rejection Millar Elevator will file a cross-complaint against STRS. Court has ordered mediation set before April 1996. Millar Elevator has accepted STRS tender of defense and agreed to indemnify STRS. Trial presently set in Santa Monica Superior Court.

**Chudnousky v. STRS (1995)** STRS Counsel: Wilner, Klein & Siegal. Insurance carrier retained counsel on behalf of STRS. Plaintiff alleges she fell over a brick in plaza and broke her hip. Claim being processed through insurance carrier. Lawsuit was filed and served on STRS in January 1997. Court has requested parties enter into mediation, which is scheduled for October 8, 1997. Plaintiff has offered to settle case for \$75,000. The mediation hearing resulted in a \$20,000 settlement offer to plaintiff to settle case. Property manager for STRS has been deposed and discovery is ongoing.

**Brien v. STRS (2000)** STRS Counsel: to be assigned by insurance company. Ms. Brien reported a slip and fall in November 1999. The insurance carrier has been notified and accepted tender of the defense. Property manager One Source has been notified and will work together with insurance carrier to defend STRS.

**Heideman v. STRS (2000)** STRS Counsel: to be assigned by insurance company. Ms. Heideman alleges injuries suffered in

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a slip and fall exiting the garage elevator. The insurance carrier has accepted tender of the defense and will work in coordination with the property manager, One Source.

**Sinay v. STRS (2000)** STRS Counsel: To be determined. Plaintiff allegedly fell on sidewalk and required transportation to and treatment at local hospital. Insurance carrier has been notified and will forward to law firm to defend claim.

**\* Estate of Ngoenkaethip v. STRS (2000) (December 2000)**  
STRS Counsel: to be retained by insurance company. A messenger for Express Courier was found at the bottom of an elevator shaft in the building, having been stuck in a stalled elevator, he attempted to exit the elevator and fell to his death. Our insurer, Zurrick Insurance Company, is investigating the facts of the incident. They will retain a law firm to defend CalSTRS.

**9720 Wilshire**

**STRS v. Inman, Weisz & Stein. (1998)** STRS Counsel: Cox, Castle & Nicholson. Tenant has vacated space and is presently in default

on rent due and owing under their lease. Advisor will seek judgment and pursue collection against tenant.

**STRS v. Heroic Entertainment (2000)** STRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease due to non-payment of rent. Complaint for Breach of Lease to obtain monetary judgement against tenant has been filed. Tenant has vacated the property.

**Atlanta Industrial**

**STRS v. Never Late Air Freight (1999)** STRS Counsel: Cofer, Beauchamp. Tenant has defaulted on lease payment. Unlawful Detainer action filed, writ of possession and judgement has been obtained. Advisor is marketing space to mitigate losses prior to further legal action.

**ALAMO QUARRY**

**STRS V. Bungalow Home Studio (2000)** STRS Counsel: Ernie

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Zachary Park. Tenant has breached lease via non-payment. Attempts by the advisor to contact tenant to negotiate a settlement have gone unanswered therefore unlawful detainer action will be commenced to obtain possession and monetary judgement against tenant. **Tenant has filed a Chapter 7 Bankruptcy staying the unlawful detainer action. Counsel for debtor has contacted STRS counsel to discuss resolution of debtor through the Bankruptcy proceeding.**

**STRS v. Partyland (1997)** STRS Counsel: Schenk, Annes, Brookmen & Tepper. Tenant has requested early termination of lease which landlord has denied (lease language does not allow an early termination). Attorneys are negotiating settlement to avoid litigation.

**STRS v. Galleria De Art (2000)** STRS Counsel: Kerr-Wilson. Tenant has breached lease via failure to make payments. Demand letter sent prior to initiation of litigation. **Tenant has vacated property moving to the East Coast. Attempts to locate tenant have been unsuccessful to this point.**

**STRS v. LYDA (2000)** STRS Counsel: Cox, Castle & Nicholson. This is a contract dispute arising from the development of the shopping center which was known to CalSTRS when we acquired the asset. There is a full indemnification rendered from the seller to CalSTRS and a \$5.3 million reserve to pay any judgement issued by the arbitration.

**The Oaks**

**STRS v. Eastman Interiors (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 11 bankruptcy. CalSTRS has filed proof of claim for lost rent.

**STRS v. Nordic Track (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 11 Bankruptcy. CalSTRS has filed proof of claim for lost rent.

**STRS v. Philman Imports (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 7 Bankruptcy. CalSTRS will file proof of claim for lost rents and an abandonment of the lease by tenant to obtain possession of space.

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**STRS v. Island Nut (2000)** STRS Counsel: Ernie Zachery Park. Tenant has filed Chapter 7 Bankruptcy. CalSTRS has filed proof of claim for lost rents and an abandonment of the lease by tenant to obtain possession of space.

**STRS v. On the Border (2000)** STRS Counsel: The Law firm of Kerr - Wilson. Tenant breached lease via non-payment of rent. Legal action initiated which resulted in tenant vacating space and negotiations **have resolved the past due rent. Advisor is marketing the space to mitigate damages as to future rents owed under lease.**

**COASTAL TOWERS**

**STRS v. A. Anthony Transportation (2000)** STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

**STRS v. South Florida Surgical (2000)** STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

**STRS v. JVA, Inc. (2000)** STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

**STRS v. American International Financial Group (2000)** STRS Counsel: Andrienne Promoff. Tenant has breached lease through non-payment of rent. Advisor is conducting as asset search to determine if legal action should be pursued.

**STRS v. Tasty Mix (2000)** TRS Counsel: Adrienne Promoff. Tenant breached lease by paying a check that returned NSF. Counsel will attempt to negotiate settlement prior to initializing legal action.

**STRS v. Yamanas (2000)** STRS Counsel: Adrienne Promoff. Tenant has breached lease via failure to pay rent and has vacated space. Landlord seeking payment of arrearage by Guarantor under lease. Asset search resulted in no assets owned by

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tenant and advisor suggests no legal action against tenant but will pursue guarantor.

**STRS v. Cryptronics (2000)** STRS Counsel: Adrienne Promoff. Tenant has defaulted via non-payment, negotiations initiated with a proposed settlement of monthly payments of \$2,500.00 on the arrearage being made by tenant. **Tenant has defaulted in negotiated settlement; asset search found no assets of tenant and advisor has recommended that lawsuit not be filed as a result of asset search.**

**\*STRS v. Natrics.com (2000)** STRS counsel; Adrienne Promoff. Tenant breached lease via non-payment of rent. Asset search revealed no assets of tenant. Advisor recommends write-off of rent due to lack of assets of tenant.

**\*STRS v. Salger, C.P. A. (2000)** STRS Counsel; Adrienne Promoff. Tenant has breached lease via non-payment of rent. Unlawful detained action initiated.

**\*STRS v. American Business Center (2000)** STRS Counsel; Adrienne Promof. Tenant has vacated property with belief that he had sub-leased their suite for the remainder of lease. Negotiations between tenant and sub-lessee have stalled and no rent has been paid. Unlawful detained action initiated against tenant.

**PROPERTY ADVISOR: Lend Lease**

**Anaheim Plaza Shopping Center**

**STRS v. El Pollo Loco (1999)** STRS Counsel: Cox, Castle & Nicholson. Negotiation to enter into lease with tenant terminated when they refused in bad faith to sign corporate lease. Attempts will be made to seek reimbursement of costs and legal fees prior to litigation.

**Ruiz v. STRS (1999)** STRS Counsel: Cuff, Robinson and Jones. Personal injury action filed by plaintiff alleging abduction from parking lot, assault and rape. Matter has been sent to insurance carrier who has retained counsel on behalf of STRS to defend action. A trial date has been set for March 27, 2000. Counsel for the insurance company will file a motion

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prior to trial in an attempt to have STRS dismissed from case.  
**Matter has been resolved via dismissal. Case closed.**

**Pacific Financial Plaza**

**STRS v. Mid Atlantic Bagel (1999)** STRS Counsel: Rudnick & Wolfe. Tenant has breached lease via non-payment, vacated premises and its parent company - Manhattan Bagel Company - has filed for protection from creditors in Bankruptcy Court. STRS counsel has filed a claim with the Bankruptcy Court for \$133,613.24 against Manhattan Bagel Company as guarantor of the lease and is attempting to negotiate with Mid Atlantic Bagel for a Termination Agreement to regain legal possession of the space.

**Joe Pacific Shoe Repairs v. STRS, et al. (1997)** STRS Counsel: to be determined - appointed by insurance company. Plaintiff alleges breach of lease commitment by property manager of STRS. STRS will be indemnified for all costs and judgments by insurance carrier of leasing agent. Case has been scheduled for trial and depositions and discovery continuing in preparation for trial. Case is being monitored by STRS counsel: Bendet, Fidell et al. with fees paid Case by the insurance carrier.

**120 19<sup>th</sup> Street**

**STRS v. Communication Images (1999)** STRS Counsel: Rudnick and Wolfe. Tenant has breached lease via non-payment of rent and has vacated property. Counsel is attempting to resolve matter without litigation.

**University Office Park**

**Washington v. STRS (1999)** STRS Counsel: Law Office of Daniel Hirshik. Plaintiff claims a slip and fall injury in the parking lot. Matter has been sent to law firm retained by the insurance carrier (Royal Insurance) for representation in defense of STRS. Cross-complaints have been filed against management company and security company on behalf of STRS. **Matter has been delayed due to Plaintiff retaining new counsel. Discovery is ongoing.**

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**Southrail Business Park**

**STRS v. Song Dba Woo-Ri (1997)** STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under Lease via nonpayment of rent. Tenant has vacated space and filed for Bankruptcy. Collection of arrearage unlikely but advisor has filed claim on behalf of STRS in Bankruptcy proceeding.

**STRS v. Dundee (1998)** STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under lease. Judgment obtained for money and possession. Possession of space has been regained by STRS. Advisor will attempt to collect money judgment from tenant.

**Non-Real Estate Investment Related Litigation**

**Integra Realty Resources, etc. and et al. v. Fidelity Capital Appreciation Fund, et al.**

U.S. Bankruptcy Court of Colorado

Plaintiffs' Counsel:

STRS Counsel: Irene Tamura, Deputy Attorney General.

This is a class action, of which STRS is a likely member, filed against several hundred shareholders of apposing counsel, a company now in Bankruptcy. STRS owned shares of Integra through its Extended Market Fund. Through a series of complex mergers, buyouts culminating on January 3, 1989, in a spin-off by Integra of the stock it owned in a subsidiary, STRS became the owner of 13,649 shares of ShowBiz Pizza with an assigned value of \$156,000. (The original cost of the Integra shares which were replaced by the ShowBiz shares was \$267,000. Thus, STRS suffered a paper loss of approximately \$111,000.) This action, brought by the trustee for several creditors of Integra, maintains that the spin-off was a conveyance in fraud of the creditors. The payer is to reverse the transaction or to reimburse Integra for the value of the fraudulently conveyed asset together with attorneys' fees. As a result of a motion brought by a majority shareholder, the Bankruptcy Court has appointed counsel for Fidelity Capital Appreciation Fund who shall provide a defense on behalf of the class of defendant's. There is presently before the court a settlement offer which will be voted on by the class of defendants of which STRS is a member and subject to court approval. Without disrupting the pending settlement on file



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with the Court, recent cases have raised a possible defense of Sovereign Immunity which will be pursued by counsel for CalSTRS. Upon filing of the Sovereign Immunity defense, apposing counsel requested further settlement negotiations which may result in CalSTRS paying a minimal amount to the class to resolve the case. Case has been settled with CalSTRS paying plaintiff the sum of \$47,711.00, settlement documents being prepared for execution and approval by court. **Case closed.**

**CalMicro Devices Litigation (1995)** STRS Counsel: Hogan & Hartson by Joseph Hassett. The federal trial court accepted the settlement proposed by the parties, which resulted in a partial recovery of damages and the savings of many millions of dollars in attorneys' fees. The former CEO of the company has been convicted of securities fraud and was ordered on December 8, 1998 to make partial restitution to the class by the conveyance of company stock valued at approximately \$3.75 million and by the assignment to the class of the \$2 million in proceeds of officers and directors insurance. This order is subject to appeal. In addition, the CEO is subject to personal liability in the original class action. Judge Walker heard arguments on our motion for Summary Judgement against the CEO on Thursday, June 3. Thereafter, CalSTRS and ColPERA entered into a tentative settlement agreement with the former CEO (Chan Desaigoudar) pursuant to which Mr. Desaigoudar would convey to all of the class all of the shares under his control. A token number of these shares (3.293% of the total) will be held back and returned to him if he is exonerated in the criminal case. A mediation was held in San Francisco on April 24, 2000 in an effort to resolve the issues that kept this settlement from being finalized. No settlement was reached, but discussions are ongoing.

On August 25, 2000, the Ninth Circuit Court of Appeals reversed Chan Desaigoudar's conviction for securities fraud and insider trading. We are awaiting a determination regarding the potential retrial of Mr. Desaigoudar and evaluating the impact of the reversal, if any, on the civil litigation against him.

**NASDAQ Litigation (1997)** STRS Counsel: Office of the Attorney General. This is a federal class action lawsuit

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originally filed in 1995. The case as currently filed alleges that the NASDAQ market makers—large brokerage houses—conspired to maintain an overly wide “spread” in the transaction costs associated with the trading of shares of stocks on the NASDAQ market. The spread in the transaction costs were limited to half points rather than quarter points, a practice that resulted in higher costs. The practice has been referred to as a form of price rigging and occurred from May 1989 to May 1994.

On November 9, 1998, a class-action settlement of \$1.03 billion was approved by the Federal district court. As a member of the class, STRS will receive a portion of the proceeds from the settlement. CalSTRS settlement claim was filed on December 8, 1999, and the system will receive between \$1-million & \$3-million from the settlement. CalSTRS should receive the funds by the end of the year 2000.

**EBS V. Barclays Global Investors, N.A. et al (1999)** STRS Counsel: To be determined (class action) A class action has been filed in the United States District Court for the District of Delaware of which CalSTRS has been noticed as a possible defendant in this action. Plaintiff, EBS Litigation L.L.C. has brought action against all persons or entities who received at least 55 shares of the June 30, 1995 transfer of shares of Dave and Busters, Inc. as a result of a spin-off from Edison Brothers Stores, Inc. Plaintiff’s allege that at the time of the spin-off, Edison Brothers Stores, Inc. was not legally authorized to give stock and that the stock was given without adequate consideration by defendants. Legal staff will monitor case.

**Note: \* indicates new litigation cases added to  
Quarterly Report.**